

Federal Communications Commission, Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”)

November 12, 2013

Dear Chairwoman Ramirez,

This filing is in response to the FCC’s request for comments on its proposals regarding “cramming” on telephone bills. I agree with the FCC that few consumers are aware of this issue, and thus support the proposed regulations to inform consumers of the problem and their right to remedy it (e.g. requiring that third-party charges be listed separately and conspicuously, clearly informing consumers of the process for filing a complaint, etc.) While these changes are important, I write to highlight that increased consumer awareness alone is insufficient to prevent these abuses from continuing in the future.

1) Even consumers who are aware of “cramming” will not take action because the costs outweigh the benefits.

The proposed regulations still place the primary burden and cost of action on the consumer by requiring him to call the phone company to inquire about suspicious charges, affirmatively opt-out of third party charges, or file a complaint with the FCC. Given that most “cramming” charges are under \$2, the cost of action will outweigh the benefit of eliminating the charge in many consumers’ minds. This is because consumers primarily consider *immediate* costs and benefits in decision-making, instead of taking into account the accumulated losses associated with “cramming” charges over many months.¹ In this context, many consumers will choose not to exert the time and effort to take action against one monthly “cramming” charge.

¹ See, e.g., McClurel, S.M., Laibson, D.I., Loewenstein, G., & Cohen, J.D. (2004). Separate Neural Systems Value Immediate and Delayed Monetary Rewards. *Science*, 306, pp. 503-507 (humans routinely trade off immediate costs/ benefits against costs/benefits that are delayed); see also Haselton, M.G. & Ketelaar, T. (2006). Irrational emotions or emotional wisdom? The evolutionary psychology of emotions and behavior. J.P. Forgas (Ed.), *Hearts and minds: Hearts and minds: Affective influences on social cognition and behavior* (pp. 21-40). New York: Psychology Press (humans have a preference for immediate gains due to heavy discounting of the future).

This problem is compounded by poor customer service and extended wait times that make consumers reluctant to contact their phone providers. Thus, while increasing consumer awareness of “cramming” will encourage some customers to take action, many others will conclude that the cost of action still outweighs the benefits, and the industry will continue to impose millions of dollars in bogus charges on the aggregate consumer market. It is precisely in situations like this that regulation should remedy market failure.

2) The cost and burden of action should be placed on the industry, not on consumers.

I support proposals that place the primary costs of action on the phone carriers and third-parties. For example, instead of giving consumers the opportunity to opt-out of third-party charges, this should be the default unless and until the consumer affirmatively opts-*in*. Alternatively, the FCC could impose fines on companies that put bogus “cramming” charges on phone bills. Of course, the risk of FCC adjudication and the amount of the fine would have to outweigh any profit gained from participating in the scheme.

Thank you for your attention and consideration.

Sincerely,

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